

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF VIRGINIA  
LYNCHBURG DIVISION**

In re:

MEMCO, INC.,

Case No.: 18-60687

Chapter 7

The Debtor.

---

ANTHONY WATERS, IVAN  
TORRES-CRUZ, DEAMOND  
ROBINSON, and JOHN LUTLEY,

Movants,

v.

MEMCO, Inc.,

Respondent/Debtor,

and

HANNAH W. HUTMAN,

Chapter 7 Trustee.

---

**MOTION TO APPROVE AGREEMENT LIFTING AUTOMATIC STAY**

Now come ANTHONY WATERS, IVAN TORRES-CRUZ, DEAMOND ROBINSON, and JOHN LUTLEY (collectively, the “Creditors”), through undersigned counsel, and pursuant to 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001, who respectfully request this Court approve an agreement to modify the automatic stay imposed by 11 U.S.C. § 362 to allow the Creditors to pursue their respective rights to recovery under state law from third-party, non-debtor insurers under certain pre-petition agreements insuring the liability of the Debtor, MEMCO, Inc. (the “Debtor”) relating to personal injuries sustained by the Creditors, and in support of this motion, allege:

***Jurisdiction and Venue***

1. The Debtor voluntarily commenced a Chapter 11 bankruptcy case in this Court on April 9, 2018. (ECF 1.) On June 19, 2018, this case converted to Chapter 7. (ECF 98.)
2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 157(b)(1).
3. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).
4. Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

***General Allegations***

5. In August 2017, before this bankruptcy case commenced, an accident occurred at a building under construction at Navy Federal Credit Union in Pensacola, Florida involving the collapse of a floor that caused the Creditors to sustain personal injuries.

6. The Debtor was involved in the construction of this building as a sub-contractor assisting with the construction of certain metal decking, placement of bolts, and ensuring the soundness of the steel structure.

7. The following insurance companies are identified in a Certificate of Liability Insurance in which the Debtor is designated as “Insured”, and may be responsible, in whole or in part, for the injuries the Creditors sustained:

- a. First Mercury Insurance Company;
- b. AXIS Surplus Insurance Company;
- c. American Interstate Insurance Company;
- d. Selective Insurance Company of America

(collectively, the “Debtor’s Insurers”).

8. The Debtor, the Chapter 7 Trustee, and the Creditors have agreed to the entry of an order granting the Creditors limited relief from the automatic stay for the sole purpose of pursuing

their respective personal injury claims against the Debtor's Insurers, with the understanding that to trigger coverage by the Debtor's Insurers, the Creditors must name the Debtor as a defendant in a civil action but acknowledging that the Creditors shall not pursue the Debtor, *in personam*, for collection of any judgment or amounts awarded to the Creditors in such civil action, all as set forth in the proposed Order attached hereto as **Exhibit 1**.

WHEREFORE, Creditors, ANTHONY WATERS, IVAN TORRES-CRUZ, DEAMOND ROBINSON, and JOHN LUTLEY, respectfully request this Court to approve their agreement with the Debtor, MEMCO, INC., and the Chapter 7 Trustee, HANNAH W. HUTMAN, to permit the Creditors to exercise their rights under state law to pursue the recovery of their personal injury claims from the Debtor's Insurers, and to grant such other and further relief that this Court deems just and proper.

Dated this 27<sup>th</sup> day of February 2019.

By /s/ Paul J. Feinman .

VSB # 29669  
Petty, Livingston, Dawson & Richards  
P.O. Box 1080  
Lynchburg, Virginia 24505  
Telephone: 434-846-2768  
Facsimile: 434-847-8195

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 27<sup>th</sup> day of February 2019, he has filed this Motion using this Court's CM/ECF filing system which will serve a copy of the Motion on counsel for the Debtor and the Chapter 7 Trustee by electronic mail, and he has mailed a copy by first class mail, postage prepaid, to the debtor(s) at the following address:

MEMCO, INC., et al.  
13324 Cedar Run Church Road  
Culpepper, VA 22701

By /s/ Paul J. Feinman .